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REMARKS

Claims 12-17 have been canceled without prejudice or disclaimer. New claims 18-23 have been added. Basis for new claims 18-23 can be found, for example, in paragraphs 21 for the wick and paragraph 22 and Examples 4 and 6 for the language "...liquid lure specific for targeting the flying insect...". Note, example 4 is directed to use of the volatile liquid attractant Trimedlure which attracts *Mediterranean fruit flies* and example 6 is directed to the use of the volatile liquid lure Cuelure which is specific for the melon fly. Claim 17, as new claim 18, has been amended to overcome the lack of proper antecedent basis by changing the language to read: "...wherein a portion of said wick area is exposed externally to an atmosphere...". As stated above, basis for this amendment can be found in paragraph 21 of the present specification. No new matter has been added. Entry of said amendment and reconsideration is respectfully requested.

The rejection of claims 12-14 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is respectfully traversed. The Office states that the limitation "the atmosphere" has insufficient antecedent basis.

New claim 18(b) has been amended and no longer has the recitation "the atmosphere". Withdrawal of the instant rejection is respectfully requested.

The rejection of claims 12,15, and 17, as it now pertains to new claims 18, 21, and 23 under 35 USC 102(b) as being anticipated by U.S. Patent No. 2,254,948 to Kubalek or U.S. Patent No. 1,056,5357 to Grimes is respectfully traversed. The Office states that Kubalek and Grimes disclose a trap device/method for providing uniform emission of a flying insect attractant comprising a container-at 10, 13 and 14 of Kubalek or at 10,14 of Grimes, having a top surface, a bottom surface, and side walls; noting figures 1-2 of Kubalek and figure 2 of Grimes, having a composition having at least one volatile liquid attractant -referring to 12,23 of Kubalek and at 11 of Grimes et al., for targeting at least one flying insect species, and a first opening-proximate 11 of Kubalek and proximate 16 of Grimes et al., in the top of the container-referring to, for example, figures 1-2 of Kubalek and figure 2 of Grimes et al., to receive a wick at 11 of Kubalek and at 16 of Grimes et al., frictionally inserted into the first opening of the container-referring to figures 1-2 of Kubalek and Figure 2 of Grimes et al., wherein the wick area exposed to the atmosphere can be increased or decreased over time to maintain maximum attractant emission-referring again to Figures 1-2 of Kubalek and Figure 2 of Grimes

et al, and a second opening citing 19 or 20 of Kubalek and - proximate 14a of Grimes et al., in the top of the container smaller than the first opening and large enough to prevent film closure by a liquid referring to Figures 1 and 2 of Kubalek and Figure 2 of Grimes et al, wherein the second opening maintains air pressure in the container wherein the container emits at least one volatile attractant for at least about six months without replenishment of the attractant referring to figures 1-2, page 1, column 2, lines 34-37 of Kubalek and Figure 2 of Grimes et al. The Office then states that Kubalek and Grimes et al. references both disclose hanging the device citing at 21-22 of Kubalek and at 13 in figure 1 of Grimes et al.

Applicant respectfully submits that Kubalek and Grimes et al both fail to anticipate the instantly claimed invention. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. It is not enough, however, that the reference discloses all the claimed elements in isolation. Neither reference teaches a device, a trap containing a device, or a method of mass trapping comprising a device **consisting** of a container having a top surface, a bottom surface, and side walls, having a composition of at least one insect specific volatile liquid attractant for specific targeting of one flying insect species, and a first opening in the top of said container to frictionally receive a

wick; a wick inserted into said first opening of said container wherein the length of said wick is frictionally adjustable to provide an emission rate of said at least one attractant which results in maximum attraction of said targeted flying insect over an extended period of time of at least about six months, and a second opening in the top of said container, smaller than said first opening and large enough to prevent film closure by a liquid, wherein said second opening allows air to enter into said container to create air pressure which allows a steady flow of said attractant into said wick. The references further fail to disclose the composition further including at least one volatile insecticide. Furthermore, Kubalek and Grimes et al. fail to teach a trap or a method for mass trapping that includes a trap and the device of the instantly claimed invention of claims 18-23. They only teach a killing device where the insects are instantly killed and fall where they may. These references fail to anticipate claims 15-17.

Kubalek discloses a device that includes sugar or molasses as an insect attractant. Sugar or molasses are not volatile insect-specific attractants. The Kubalek patent specifically states on column 2, lines 34-36 that only water evaporates. The reference fails to disclose a volatile liquid attractant for specific targeting of one flying insect species. If the Office is interpreting water as a volatile insect attractant, it is not

an insect-specific attractant that would target a specific insect species. It would attract any insect whether flying or crawling. Furthermore, Kubalek fails to teach a frictionally adjustable wick to provide a uniform emission rate of said at least one attractant which results in maximum attraction of said flying insect over a period of at least about 6 months without replenishing the liquid attractant. The device of Kubalek is for killing insects that come in direct contact with the wick. The attractant, sugar or molasses, remains in solution. The sugar or molasses encourage the insect to ingest enough of the liquid containing the toxicant to kill the insect. The wick only needs to be exposed at the surface of the device in order for the flying insect to come in contact. There is no teaching in the patent that the wick is adjusted to provide a maximum uniform emission rate of said at least one attractant which is a volatile attractant which results in maximum attraction of said flying insect over an extended period of at least about six months. The patent is totally silent as to this element of the instantly claimed invention. From the disclosure and the figures it appears that the wick is flush with the top of the device. Furthermore, Kubalek fails to teach a first and second opening which form a single opening with the first opening being of a size to frictionally hold a wick and said second opening is elongated and narrower than said first opening. Kubalek clearly

fails to anticipate the presently claimed invention. Withdrawal of the instant rejection based on Kubalek is respectfully requested.

Grimes et al. discloses a device that includes a tray or cup of any suitable size or configuration but adapted to contain a quantity of water. Within the tray is a pedestal and within the pedestal and tray is a tubular magazine which extends down toward the bottom of the tray and serves to support a capillary member or wick whose function is to draw water upward to the top of the pedestal. At the top of the pedestal is a pad made of a plurality of layers of fabric which is adapted to contain any suitable dry poison. The patent states that Figure 2 is similar to figure 1 with the cap or guard removed. It is merely a drawing without elements 17 and 18 which cover the wick when in use. It is not the operable invention, it is shown to illustrate each and every part of the invention such as in an exploded view of a mechanical patent. Element 17 sits over and in contact with the wick so that the wick delivers water to element 17 in order to solubilize the toxicant. Furthermore, the reference fails to teach a wick that extends into a liquid containing a lure. Element 18 is a guard that retains the pads in position on top of the pedestal and allows flies to reach through the member 18 to partake of the poison solution on element 17. These elements are outside the scope of the presently claimed invention.

Furthermore, Grimes et al. teach the use of a tubular magazine to support a capillary member or wick which is outside the scope of the presently claimed invention. The rejection is improper and fails to anticipate the presently claimed invention.

Neither reference anticipates the claimed invention. Applicant respectfully requests withdrawal of the instant rejections.

The rejection of claims 13 and 16, as it now pertains to new claims 19 and 22, under 35 USC 102(b) as being anticipated by Kubalek is respectfully traversed. The Office states that Kubalek discloses the composition further includes at least one volatile insecticide wherein the at least one volatile insecticide is absorbed by the wick citing figure 2 and page 1, column 2, lines 26-37.

Applicants respectfully submit that Kubalek fails to anticipate the presently claimed invention of claims 19 and 22. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. It is not enough, however, that the reference discloses all the claimed elements in isolation. As stated above in the previous 102(b) rejection, Kubalek discloses a device that includes sugar or molasses as an insect attractant. Sugar or molasses are not volatile insect-specific attractants. The Kubalek patent specifically states on column 2, lines 34-36 that only water

evaporates. The reference fails to disclose a volatile liquid attractant for specific targeting of one flying insect species. If the Office is interpreting water as a volatile insect attractant, it is not an insect-specific attractant that would target a specific insect species. It would attract any insect whether flying or crawling. Furthermore, Kubalek fails to teach a frictionally adjustable wick to provide a uniform emission rate of said at least one attractant which results in maximum attraction of said flying insect over a period of at least 6 months without replenishing the liquid attractant. The device of Kubalek is for killing insects that come in direct contact with the wick. The attractant, sugar or molasses, remains in solution. The sugar or molasses encourage the insect to ingest enough of the liquid containing the toxicant to kill the insect. The wick only needs to be exposed at the surface of the device in order for the flying insect to come in contact. There is no teaching in the patent that the wick is adjusted to provide a maximum uniform emission rate of said at least one attractant which is a volatile attractant which results in maximum attraction of said flying insect over an extended period of at least about six months. The patent is totally silent as to this element of the instantly claimed invention. From the disclosure and the figures it appears that the wick is flush with the top of the device. Furthermore, Kubalek fails to teach a first and

second opening which form a single opening with the first opening being of a size to frictionally hold a wick and said second opening is elongated and narrower than said first opening. Kubalek clearly fails to anticipate the presently claimed invention. Withdrawal of the instant rejection based on Kubalek is respectfully requested.

The rejection of claims 13 and 16, as it now pertains to new claims 19 and 22, under 35 USC 103(a) as being unpatentable over Grimes et al. as applied to claims 12 and 15 above, and further in view of Kubalek is respectfully traversed.

The Office states that Grimes et al. further discloses a volatile insecticide citing page 1, lines 57-72. The Office then states that Grimes et al. does not disclose the wick absorbs the volatile insecticide. The Office then states that Kubalek discloses the wick at 11 absorbs the volatile insecticide citing figure 2, and page 1, column 2, lines 26-37. The Office concludes that it would have been obvious to one of ordinary skill in the art to take the device of Grimes et al and add the wick absorbing volatile insecticide of Kubalek so as to allow for the volatile insecticide to be inside the container and thus out of reach of a person or a pet.

Grimes et al. fail to teach a volatile insecticide. The poison is in solution form in the pad and the insects must partake of it. Kubalek et al. clearly teach that only the water

evaporates and the poison will last practically indefinitely as only the water will evaporate-see column 2, lines 34-37. The combination of Grimes et al. taken in view of Kubalek would teach one of ordinary skill in the art to make a device that has less of an area for insects to partake of the poison and would be less effective. The combination of references fails to teach the instantly claimed invention which requires at least one volatile liquid attractant specific for one flying insect, and a volatile insecticide.

There would be no motivation to one of ordinary skill in the art to combine Grimes et al. with Kubalek since the combination teaches the use of static wicks, both reference are totally silent on an adjustable wick, silent on the use of volatile insecticides, and neither device in the two references include a trap or are an insect trap. They both fail to teach a method for trapping a targeted insect species. There is simply no motivation save for the teachings of the inventor's application to produce the claimed invention. The Office is using the improper standard of **IMPROPER** hindsight analysis. It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered *prima facie* obvious.

The Office is also using the improper standard of obvious to

try. It is respectfully submitted that the essence of obviousness does not arise by merely picking and choosing from the prior art to produce the claimed invention. "In order to establish *prima facie* obviousness, it is necessary for the Examiner to present evidence preferably in the form of some teaching, suggestion, incentive, or general available knowledge, that one of ordinary skill in the art would have been led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. & Int'f, 1993). Starting from this correct standard of obviousness, the error of the Office is clear-it is improper because the Office has failed to identify teachings in the prior art motivating the skilled artisan to produce the device of the presently claimed invention.

No references or combination of references have been provided which would teach, suggest, or motivate one of ordinary skill in the art to modify the Kubalek patent by providing an adjustable wick, a volatile liquid insecticide, a trap nor have any references been provided to teach how to modify Grimes et al with Kubalek in a way to allow maximum insect attraction for at least six months and to emit a volatile liquid attractant for at least about six months without replenishment of said attractant. There is simply no motivation save for the teachings of applicants application to produce the claimed invention.

The rejection is improper. Applicants respectfully request withdrawal of the instant rejection.

The rejection of claim 14, as it now pertains to new claim 20, as being unpatentable over Kubalek or Grimes et al. as applied to claim 12 above, and further in view of U.S. Patent number 4,908,977 to Foster is respectfully traversed. The Office states that Kubalek and Grimes further disclose the first opening-proximate 11 of Kubalek and proximate 16 of Grimes et al. being of a size to frictionally hold a wick at 11 of Kubalek and at 16 of Grimes et al citing figures 1 and 2 of Kubalek and figure 2 of Grimes et al and the second opening at 19 or 20 of Kubalek and proximate 14a of Grimes et al. is elongated and narrower than the first opening citing figures 1-2 of Kubalek and figure 2 of Grimes et al. The Office further states that Kubalek and Grimes do not disclose the first and second opening form a single opening. The Office then states that Foster does disclose the first opening at the top of the container at 1 and the second opening at any of the openings at 3 form a single opening citing Figures 1 and 2. The Office concludes that it would have been obvious to one of ordinary skill in the art to take the device of Kubalek or Grimes et al and add the first and second opening forming a single opening of Foster so as to allow for the insects to access the volatile insecticide in the container.

Applicants respectfully submit that the combination of

Kubalek or Grimes further in view of Foster fails to render the instantly claimed invention *prima facie* obvious. Neither Kubalek or Grimes et al. teaches a container having a top surface, a bottom surface, and side walls, having a composition of at least one insect specific volatile liquid attractant for specific targeting of one flying insect species, and a first opening in the top of said container to frictionally receive a wick, a wick inserted into said first opening of said container wherein the length of said wick is frictionally adjustable to provide an emission rate of said at least one attractant which results in maximum attraction of said targeted flying insect over an extended period of time of at least about six months, and wherein said first and a second opening form a single opening where said second opening is elongated and narrower than said first opening and said second opening is large enough to prevent film closure by a liquid. The references further fail to disclose the composition further including at least one volatile insecticide.

Kubalek discloses a device that includes sugar or molasses as an insect attractant. Sugar or molasses are not volatile insect-specific attractants. The Kubalek patent specifically states on column 2, lines 34-36 that only water evaporates. The reference fails to disclose a volatile liquid attractant for specific targeting of one flying insect species. If the Office

is interpreting water as a volatile insect attractant, it is not an insect-specific attractant that would target a specific insect species. It would attract any insect whether flying or crawling. Furthermore, Kubalek fails to teach a frictionally adjustable wick to provide a uniform emission rate of said at least one attractant which results in maximum attraction of said flying insect over a period of at least 6 months without replenishing the liquid attractant. The device of Kubalek is for killing insects that come in direct contact with the wick. The attractant, sugar or molasses, remains in solution. The sugar or molasses encourage the insect to ingest enough of the liquid containing the toxicant to kill the insect. The wick only needs to be exposed at the surface of the device in order for the flying insect to come in contact. There is no teaching in the patent that the wick is adjusted to provide a maximum uniform emission rate of said at least one attractant which is a volatile attractant which results in maximum attraction of said flying insect over an extended period of at least about six months. The patent is totally silent as to this element of the instantly claimed invention. From the disclosure and the figures it appears that the wick is flush with the top of the device. Kubalek fails to teach a first and second opening which form a single opening with the first opening being of a size to frictionally hold a wick and said second opening is elongated and

narrower than said first opening.

Grimes et al. discloses a device that includes a tray or cup of any suitable size or configuration but adapted to contain a quantity of water. Within the tray is a pedestal and within the pedestal and tray is a tubular magazine which extends down toward the bottom of the tray and serves to support a capillary member or wick whose function is to draw water upward to the top of the pedestal. At the top of the pedestal is a pad made of a plurality of layers of fabric which is adapted to contain any suitable dry poison. The patent states that Figure 2 is similar to figure 1 with the cap or guard removed. It is merely a drawing without elements 17 and 18 which cover the wick when in use. It is not the operable invention, it is shown to illustrate each and every part of the invention such as in an exploded view of a mechanical patent. Element 17 sits over and in contact with the wick so that the wick delivers water to element 17 in order to solubilize the toxicant. Furthermore, the reference fails to teach a wick that extends into a liquid containing a lure. Element 18 is a guard that retains the pads in position on top of the pedestal and allows flies to reach through the member 18 to partake of the poison solution on element 17. These elements are outside the scope of the presently claimed invention. Furthermore, Grimes et al. teach the use of a tubular magazine to support a capillary member or wick which is outside the scope of

the presently claimed invention.

Foster fails to cure the deficiencies of Kubalek or Grimes since Foster fails to teach a volatile liquid insecticide and an adjustable wick which provides maximum uniform emission rate of at least one volatile liquid attractant which results in maximum attraction of said targeted flying insect over an extended period of at least about six months. Furthermore, Foster fails to teach a device which emits at least one volatile liquid attractant. Foster teaches that item 1 is the hollow base section and top opening is not open. The wicking material is the target area which is sloped downward so that intoxicated flies fall off the targeted area. Item 5 is a grill that covers the target area and is optional and has multiple openings 3 so that flies can land on the target area, ingest the nonvolatile toxicant but prevent accidental contact by humans and animals. Furthermore, the openings 3 in 5 would not prevent film closure by the liquid in the reservoir. The wick is the target area in the device of Foster and the patent provides no teaching to one of ordinary skill in the art how to adjust the target area to increase or decrease the exposed area to obtain maximum attraction of the targeted flying insect to the volatile attractant. In fact, the patent teaches at column 5, lines 3-11 that the device would be useful for killing even if all the fluid or moisture is allowed to evaporate since the toxicant readily dissolves in the insect

saliva. This teaches away from the instantly claimed invention which requires a volatile liquid toxicant. The Office states that the second openings 3 form a single opening. However, 3 are not openings in the container but openings in a grill 5 which covers the target area which closes the entire top of the container-see figure 2. The only opening disclosed by Foster are optional and in the side or sides of the base section-see column 3, lines 34-50, column 4, lines 28-40.

There would be no motivation to one of ordinary skill in the art to combine Kubalek or Grimes with Foster since the combination of teachings teach the use of static wicks, the references are totally silent on an adjustable wick, totally silent as to the use of volatile insecticides and fail to teach a first and second opening that form a single opening as required by new claim 20. There is simply no motivation save for the teachings of the inventor's application to produce the claimed invention. The Office is using the improper standard of **IMPROPER** hindsight analysis. It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered *prima facie* obvious.

The Office is also using the improper standard of obvious to try. It is respectfully submitted that the essence of obviousness does not arise by merely picking and choosing form

the prior art to produce the claimed invention. "In order to establish *prima facie* obviousness, it is necessary for the Examiner to present evidence preferably in the form of some teaching, suggestion, incentive, or general available knowledge, that one of ordinary skill in the art would have been led to combine the relevant teachings of the applied references in the proposed manner to arrive at the claimed invention. *Ex parte* Levengood, 28 USPQ2d, 1300 (Bd. Pat. & Int'f, 1993). Starting from this correct standard of obviousness, the error of the Office is clear-it is improper because the Office has failed to identify teachings in the prior art motivating the skilled artisan to produce the device of the presently claimed invention.

No references or combination of references have been provided which would teach, suggest, or motivate one of ordinary skill in the art to modify Kubalek or Grimes et al. to provide at least one volatile insect attractant specific for attracting one insect, a volatile liquid insecticide, an opening that is made up by a first and second opening that form a single opening with the first opening being of a size to frictionally hold a wick and said second opening is elongated and narrower than said first opening. The Foster patent fails to cure these deficiencies of Kubalek and Grimes et al. Furthermore the combination of Kubalek or Grimes et al. taken with Foster fails to teach a container which emits said at least one volatile attractant for at least

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